

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF STORAGE OF)
WATER IN FISH CREEK RESERVOIR)
OWNED AND CONTROLLED BY)
THE FISH CREEK RESERVOIR COMPANY)
_____)

**ORDER TO
SHOW CAUSE**

The Director of the Idaho Department of Water Resources (“Director” or “Department”), being charged with the duties of protecting life and property, enforcing specific statutes of the state of Idaho and the rules promulgated by the Department, and being authorized to order compliance with the provisions of the law relating to the construction, operation, and maintenance of dams and reservoirs, has conducted an inspection of Fish Creek Dam.

Based upon the Department’s inspection and file records, and understanding of the law, the Director makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Authorization to store water at Fish Creek Dam was issued by the Department on February 11, 2003.

2. The Department’s February 11, 2003 letter authorizing storage of water in Fish Creek Reservoir included the following statement:

Authorization to store water beyond October 31, 2002 will be dependent upon a review of the condition of the dam by IDWR and upon progress made by the Fish Creek Reservoir Co. toward developing a plan or initiating a program for rehabilitation or replacement of the dam.

3. The Department’s authorization to store water expires on October 31, 2003.

4. Tests of the emergency warning system, installed by Fish Creek Reservoir Company in September 2002, have shown that it is less than 100 percent reliable at all times.

5. On June 3, 2003, the Department received a copy of a report prepared by an engineering consultant detailing the results of a preliminary study of three options for constructing a replacement dam.

6. As of the date of this Order, no plans for construction of a new dam or rehabilitation of the existing dam have been submitted to the Department by the Fish Creek Reservoir Company.

7. The Department inspected Fish Creek Dam on August 20, 2003 and found that concrete deterioration of the structure is continuing at a significant rate and that no physical rehabilitation work has been accomplished.

8. The stability of Fish Creek Dam is inadequate to impound water above the elevation corresponding to gauge height 67 feet.

9. The outlet pipes at Fish Creek Dam can not be operated to maintain a restricted reservoir elevation because their maximum capacity is only 24 percent of the 100 year flood and only 4 percent of the inflow design flood, which is the probable maximum flood ("PMF").

10. By provisions of IDAPA 37.03.06, Fish Creek Dam is classified as a large, high-hazard dam.

CONCLUSIONS OF LAW

1. Section 42-1710, Idaho Code, provides, in part, as follows:

The Department of Water Resources, under the police power of the State, shall supervise the construction, enlargement, alteration, repair, maintenance, operation and removal of dams, reservoirs and mine tailings impoundment structures for the protection of life and property.

2. Section 42-1717, Idaho Code, provides, in part, as follows:

The Director shall at State expense inspect or cause to be inspected, as often as he thinks advisable, every dam used for holding water and mine tailings impoundment structure used for holding tailings slurry in this state; however, all dams twenty (20) feet or more in height or mine tailings impoundment structures more than thirty (30) feet in height shall be inspected at least once every two (2) years, and if after any such inspection such dam or mine tailings impoundment structure, in the opinion of the Director, is unsafe, and life or property liable to be endangered by reason thereof, the Director shall give written notice and order by certified mail or by personal service upon the owner or owners to remove or repair the same so as to make it safe. If such owner or owners shall neglect or refuse to remove or repair the same after notice to that effect has been given in writing by the director, the Director may draw off all or part of such water from behind such dam, embankment or mine tailings slurry from behind mine tailings impoundment structure and keep said water or mine tailings slurry drawn off until such time as the orders shall be complied with.

3. Fish Creek Dam must be rehabilitated, reconstructed, or otherwise made safe to store water above gauge height 67 feet to prevent injury or damage to people or property downstream of the reservoir.

4. The Director of the Department should issue an Order to Show Cause to the owner and operator of Fish Creek Dam directing the owner and operator to demonstrate within 30 days that the dam is safe to store water to its full design level.

ORDER TO SHOW CAUSE

IT IS HEREBY ORDERED as follows:

1. Fish Creek Reservoir Company, the owner and operator of Fish Creek Dam and its associated reservoir, shall within 30 days of the date of this order show cause why the Department should not restrict the maximum storage elevation in the reservoir to no more than gauge height of 67 feet.

2. Within 30 days of the date of this order, Fish Creek Reservoir Company shall also show cause why the Department should not require that the dam be breached in order to ensure that the restricted reservoir elevation is maintained under normal operating and flood conditions.

3. Failure of Fish Creek Reservoir Company to comply with this order will result in issuance of an order by the Department to breach the dam in order to ensure that the reservoir elevation is maintained at a level no higher than gauge height 67 feet under normal operating and flood conditions.

DATED this 31st day of October 2003.

_____/Signed/_____
KARL J. DREHER
Director